IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P. SHANMUGAM
and
THE HONOURABLE MR. JUSTICE S.K. KRISHNAN

Habeas Corpus Petition No.2182 of 2002

Sundari .. Petitioner

-Vs-

1. State of Tamil Nadu, rep. by
the Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2. The District Magistrate and
District Collector,
Erode District, Erode. .. Respondents

PRAYER : Petition under Article 226 of the Constitution of India seeking to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent in Cr.M.P. No.12/2002/C1 dated 6.5.2002, set aside the same and consequently direct the respondents to produce the body of the detenu Chinnasamy, S/o. Sengottaiyan, now detained in the Central Prison, Coimbatore before this Honourable Court and set him at liberty forthwith.

!For Petitioner : Mr. C. Kathiravan

^For Respondents : Mr. A. Navaneethakrishnan,
Addl. Public Prosecutor.

:O R D E R

P. SHANMUGAM, J.
Petitioner, the wife of one Thiru. Chinnasamy, hereinafter referred to as the detenu, has filed the above Habeas Corpus Petition. The detenu had been branded as 'Goonda' and an order of detention had been passed against him by the second respondent on 6.5.2002 under Section 3(1) of Tamil Nadu Act 14 of 1982. The H.C.P. is filed against this order.

2. The detenu was found to have been involved in the manufacture of spurious liquor, forgery and counterfeit of trade mark labels of various

distilleries and lending of "Phenobarbitone" Tablets in Tiruppur Prohibition Enforcement Wing Crime No.1116 of 1989 dated 26.8.1989 registered under Sections 4(1-A)(ii), 4(1)(a)(b)(f)(g)(h)(i)(k) and 7 of the Tamil Nadu Prohibition Act, 1937 and Sections 420, 465, 467, 46 8, 483, 485, 486 read with 109 of the Indian Penal Code. In the second case in Namakkal Prohibition Enforcement Wing Crime No.778 of 199 9 dated 21.4.1999 registered under Sections 7, 4(1)(aaa), 5 and 11 of the Tamil Nadu Prohibition Act, 1937 read with Tamil Nadu Rectified Spirit Rules, 1959, the detenu is alleged to have transported 10,735 litres of Rectified Spirit in two lorries from Tamil Nadu to Kerala. In the third case in Tiruppur North Police S tation Crime No.316 of 2 992 dated 21.2.2002 registered under Sections 120(b), 341, 342, 347, 365, 368, 307, 396, 397, 506(ii) read with 34 I.P.C., he had illegally confined one Thiru. Muthuvel @ Kumar. The first two cases are pending trial and the third case is under investigation. While so, the detenu is alleged to have abducted, wrongfully confined and extracted a sum of Rs.35 lakhs from one

Palanisamy, and on the basis of the complaint of the said victim dated 9.2.2002, a case was registered in Nambiyur Police Station Crime No.22 of 2002 under Sections 364 and 397 I.P.C.

3. The facts relating to the ground case are stated hereunder :-
The complainant Thiru. V. Palanisamy is the owner of a number of business establishments at Tiruppur under the name and style of 'J.V. Group Companies' and he is having a spinning mill in the name and style of 'Jayavarma Textiles Private Limited' at Kettichevi yur. According to the complainant, on 6.2.2002, while he was returning to Tiruppur from the textile mill at about 1900 hours in his Lancer car bearing Registration No.TN-39-X-5455, about three kilometers away from his textile mill, he received a cellphone call from his elder brother and as he could not get a clear connection, he halted his car, got down from the car and was talking over the cellphone. At that time, a TATA SUMO Jeep came from north to south on that road, overtook his car and after crossing some distance, returned back towards his car, crossed his car and then came on reverse and parked it in such a way as touching his car. When Palanisamy instructed his driver to take the car as the jeep was about to dash against his car, six persons got down from the jeep and at the same time, another jeep came from south to north on the road and parked it across the road in front of his car which was about to start. All these persons joined together and dragged the driver from the car and forced him to the rear of his car. They occupied his car, the complainant was placed between them and after turning on the C.D. Player on high volume, they sped the car towards the south. He was blind-folded and the vehicle travelled for nearly three hours and at about 10 pm, he was taken to a thatched shed. There, they removed the cloth from his eyes and a person from the gang instructed the complainant to contact his house over his cellphone and inform them that he had gone to Coimbatore for business purpose and that he would come the next morning and accordingly, he informed his wife the same. The gang members informed the complainant that they were members of L.T.T.E. and that they want to extract money from rich people like him and they threatened him to give a cash of Rs.10 crores. They manhandled the complainant's driver in his presence and threatened him that he would also be treated in the same manner if he fails to co-operate with them. One of the

gang members tied a belt around the complainant's hip and pointed out that the belt contained a bomb and that it would explode within a short time. He could hear an alarm sounding 'tick, tick, ...' from the belt.

4. In the early morning at 0300 hours on the next day, i.e. 7.2.2002 , one of the persons informed the complainant that the leader of the gang had come and that three or four persons covering their faces with a cloth asked the complainant for Rs.10 crores, for which he replied them that he could arrange only a sum of Rs.10 lakhs immediately and that he could arrange Rs.25 lakhs from the bank. They reminded him of the belt which would explode if he did not co-operate. At 0700 hours on 7.2.2002, they directed him to contact his house over his cellphone and tell them that he would come in the afternoon and that he tried two or three times to pass on such a message over the cellphone and at last, he could get the connection. At 0800 hours in the morning, they told him that the leader had agreed to receive a cash of Rs.35 lakhs and that first of all, he should arrange to bring a cash of Rs.10.5 lakhs along with the cheque book and the seal. Accordingly, at 0830 hours, he contacted his Manager Thiru. Soundararajan through his cellphone and asked him to bring the cash. He could not inform him about his abduction as the gang members were watching his conversation. The gang members obtained signatures and thumb impressions of the complainant in blank papers, bond papers and pronotes in more than ten sheets and they told him to change his dress which was kept in his car. They removed his wrist watch, gold ring, gold chain and cash of Rs.25,000/- from him and thereafter, the wrist watch was only returned to him. They boarded him into the SUMO jeep and the gang members sat in the car and they took him in the SUMO car, blind-folded. The car was driven on a road, which according to the complainant, was not a highway road, for about 40 minutes and then, the car reached the main road and then, after travelling 1-1/2 hours, they removed the cloth from his eyes and on seeing the kilometer stone, he understood that they had come to Kangayam and again, after a travel of one hour, he understood that they had come to Erode. It was about 1145 hours then in the morning and when they tried to stay in a lodge at Erode, room was not available. The gang members told him that the amount, which had already been arranged, should be brought to Perundurai and accordingly, the complainant contacted his Manager over his cellphone and asked him to come to Vijayamangalam Main Road with the cash. He also called up the Manager of Indian Overseas Bank at Velampalayam and asked him to keep a cash of Rs.25 lakhs ready. In the meanwhile, they reached Vijayamangalam where his Office Manager was standing with the complainant's company jeep. After getting the bag containing the money from the Manager while sitting in the car, he handed it over to the person who was sitting by his side and as per his instructions, he directed the Manager to go to the office. Thereafter, the vehicle proceeded towards Erode and when the Manager Thiru. Soundararajan tried to follow the vehicle, the complainant signalled him not to follow the vehicle and accordingly, his Manager did not follow the vehicle. After travelling for five kilometers and upon ascertaining that the vehicle of the Manager was not following them, they entered into Kanakkampalayam Branch Road, reached the Ring Road, Avanashi Road, Thirumurugan Poondi Road and at last, they went to the Bank in which the complainant is having his account. They had another belt bomb in their hand and each one of the gang members picked up explosive substances from the bag,

put the same in their shirt pockets, a member of the gang tied himself with another belt and threatened the complainant that if he tried to escape, he would kill him by embracing him and exploding the bomb and they further threatened him that his wife and children would also be killed by the gang members who were present near his house. They instructed him that while going to the bank, he must treat them as his office workers. After entering the bank, one of the persons was with him in the Bank Manager's cabin and another person was standing in front of the cabin. The complainant took out a torn leaf from the cheque book which was given by his Manager at Vijayamangalam and gave it to the Bank Manager. The Bank Manager gave Rs.25 lakhs in bundles and a member of the gang, who came along with him, received the same and put it in the bag which was kept by him. The complainant did not come out of the bank due to the fear that he would be abducted again for extortion of money and killed. The persons who went along with him went out after a few minutes and after some time, the complainant came out of the bank and saw that the persons who had abducted him had gone away. Thereafter, he disclosed the facts to the Bank Manager, contacted his company, instructed them to send a car and reached his house as soon as the car arrived. According to the complainant, 10 to 12 persons were involved in his abduction.

5. On 7.2.2002 night at 2200 hours, his car driver contacted him over phone and informed that he was released by the gang at 1600 hours and that he was in Chinnadharapuram. As the whole episode caused mental agony to him, the complainant decided to lodge a complaint with the police after meeting his car driver and accordingly, on 8.2.2002, at about 1100 hours, when his car driver met him, the complainant lodged a complaint at the Police Station in connection with the abduction episode which occurred on 6.2.2002 at about 1915 hours, the extortion of gold chain weighing four sovereigns, a gold ring weighing one sovereign, a cell phone and cash of Rs.25,000/- which was kept by him on the day and also a cash of Rs.10,50,000/- which was received by him from his Manager and further a cash of Rs.25 lakhs which was withdrawn from the Bank on 7.2.2002 as also the threat to kill him and his family members by showing explosive substances. The Sub Inspector of Police received the complaint and registered a case under Sections 36 4 and 397 I.P.C.

6. The Inspector of Police took up further investigation of the case on 9.2.2002, visited the scene of occurrence, examined the complainant and other witnesses. On the basis of certain incriminating materials, they could trace out a telephone number of Chennai and after further information and investigation, Tvl. Chandrasekar and Baskar were arrested and interrogated. They were later brought to Nambiyur Police Station on 16.5.2002 and during the course of investigation, they admitted the fact that they went to Tiruppur and abducted the complainant Palanisamy and extorted money from him. They made a confession statement in the presence of witnesses. On further investigation and on the basis of their statements, the Inspector of Police arrested Tvl. Muthukrishnan, Devaraj, Kamaraj, Krishnan @ Games Krishnan and seized the properties and brought them to Nambiyur Police Station. On further investigation by the Inspector of Police, one A.S. Ponnuraj @ A.P.R. was arrested on 22.2.2002 and in his confession statement, he had stated that he knew Chinnasamy, the detenu herein, for several years and that he had to give a balance amount of Rs.5.25 lakhs to him for a

transaction maintained between them. He also stated that on 1 8.1.2002, the detenu had told him that he had no money to pay him, but there was a wealthy man and if abducted, he would give Rs.1 crore and that after three weeks, the detenu and his associates A.S. Ponraj @ A.P.R., Bangalore Velu, Nagendran, Kumar @ Kungfu Kumar, Kolathur Chandrasekaran @ Babu, Baskar, Mylapur Selvanesan @ Selvan, Kolathur Seenu, Rajesh @ Samy, Crompet Anandhakumar @ Anandhan, Sankarapandi, Krishnan and some others hatched a conspiracy at A.P.R. Builder's Office, Vadapalani, Chennai to abduct Tiruppur J.V. Mill Onwer Palanisamy. According to him, Tvl. Nagendran, Kumar @ Kungfu Kumar, Chandrasekaran @ Babu, Baskar, Seenu, Rajesh @ Samy, Anandhakumar @ Anandhan and Selvanesan @ Selvan went to Tiruppur along with the detenu to execute their plan and after successful completion of the operation, he met Thiru. Nagendran and his friends on 8.2.2002 in the evening and at that time, they told him that they had executed the task successfully. He also stated that the detenu divided the share and gave it to them, that they gave a bag with cash which was given by the detenu and that he had kept the same bag with cash at A.P.R. Office, Vadapalani, Chennai. Thereafter, A.P.R. was arrested and produced before Judicial Magistrate No.2, Gobichettipalayam, who remanded him to judicial custody. The remand period was later extended upto 8.5.2002. The F. I.R. was altered to one under Sections 120(b), 364(A), 395 read with 3 97, 384, 347, 216(A) and 506(ii) I.P.C.

7. Thereafter, Tvl. Velu and T. Krishnan were arrested on 27.2.2002 and they have admitted the involvement of the detenu and others in a number of abduction episodes for extortion of money. Thiru. Murugesan @ Murugan was then arrested on 28.2.2002, who had also admitted the abduction of Palanisamy. He gave a confession statement stating that the detenu was his maternal uncle and that as per the plan of his uncle, he had earlier abducted one Muthuvel @ Kumar along with his uncle's associates and brought him to Chennai by giving anaesthetic medicine and extorted a sum of Rs.20 lakhs from him. Later, his uncle had abducted one Palanisamy and extorted money and gave him a cash of Rs.10,000/- from the extortion money for his expenditure. Later, Krishnan and Murugesan were produced before the Magistrate, who remanded him to judicial custody. In the meanwhile, Thiru. Selvanesan @ Selvan surrendered before Metropolitan Judicial Magistrate No.V, Chennai and he had confessed the whole episode. The Inspector of Police arrested Thiru. Kumaresan, Son of Krishnan @ Games Krishnan on 13.2.2002, who gave a voluntary confession statement. He was produced before the Judicial Magistrate, Gobichettipalayam, who remanded him to judicial custody. The Inspector later on proceeded to Chennai along with Tvl. Kumar @ Kungfu Kumar, Rajesh @ Samy and Anandhakumar @ Anandhan in order to recover the case property and seized a cash of Rs.40,000/- from the house of Kumar @ Kungfu Kumar at Red Hills under a cover of mahazar on 15.3.2002.

8. On 23.2.2002, the police arrested Chinnasamy, the detenu and Sankarapandi (detenu in H.C.P. No.2183 of 2002). The detenu admitted his offence and made a confession statement voluntarily in the presence of witnesses. In his statement, he had admitted that he had a large debt and that the lenders insisted him to repay the loans and hence, he decided to abduct a wealthy person for ex tortion of money and in this regard, on 22.1.2002, he hatched a conspiracy at A.P.R. House, Vadapalani, Chennai along

with his associates to abduct Palanisamy. He narrated the method of abduction and the extortion of Rs.35 lakhs from Palanisamy and also as to how he distributed the respective shares among his gang members. On the basis of the said information, some of the amounts distributed were recovered and all these materials were placed before the detaining authority who was satisfied that these activities of the detenu had created a feeling of insecurity in the minds of the general public, traders and labourers and had caused annoyance to public tranquility and that there was a compelling necessity to pass an order

of detention against the detenu and hence, the impugned order of detention had been passed with a view to prevent the detenu from indulging in prejudicial activities in future. The said order is now under challenge.

9. The only ground argued by the learned counsel for the petitioner is that there is a business dealing between the detenu and the victim Palanisamy and that in the course of their business transaction, the money was taken by him and that in any event, according to him, this is purely a business transaction and the alleged offence could not be a ground affecting public law and order so as to invoke the provisions of Act 14 of 1982. Therefore, he prays for quashing the order of detention.

10. Whereas, learned Additional Public Prosecutor, by relying upon the previous cases involving the detenu, the modus operandi adopted by the detenu to extort money, the confession statement which remain uncontroverted till the order of detention was passed and also the statement of the Bank Manager and other accused and witnesses, submits that the activities of the detenu have far reaching consequences in general and in particular, the impact of the activities of the detenu is heavy on the industrialists and public of Tiruppur Town. By referring to the resolution of the industrialists, the Press reports and the corroborative materials which emanated during that period, he submitted that women of Tiruppur Town were afraid of going for their morning walks and the factory owners and industrialists were afraid of dealing with persons and they were in particular afraid of carrying cash through banks or receive or take money from banks, he contends that this is a fit case affecting law and order and the general public. In any event, according to him, at least a section of the public, namely Palanisamy, who was abducted and his family members were very much affected and that by this act of the detenu, the staff and the workers of the victim and his family members were threatened and their lives and properties were in danger and therefore, the order of detention is justifiable. He prays that in order to remove the fear from the minds of factory owners of Tiruppur and other adjoining areas and to maintain peace, it it necessary that the detention order is sustained.

11. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and considered the matter carefully.

12. The question that arises for consideration is whether the admitted action of the detenu would involve affecting the maintenance of public order and peace.

13. The fact that the detenu is already involved in serious offences of transport of spurious liquor in large quantity and counterfeit of trade marks of popular brands of Indian Made Foreign Liquor and blending it with poisonous substance is pending in crime No.1116 of 1989 is not in dispute. Another case of transport of rectified spirit is also pending trial. Besides, the detenu is involved in the abduction of one Kumar and extortion of Rs.20 lakhs from him by placing knife on his neck, forcing him to take brandy mixed with tablets, keeping him in confinement and threatening to kill him by pouring petrol and thereby extracting Rs.20 lakhs from him, which case is also under investigation.

14. Close on heels to the third adverse case, the ground case has occurred on 6.2.2002. The factum of the abduction, extortion and the modus operandi has been clearly spoken to by all the accused in their confession statements. Till the order of detention was passed on 6.5.2002, the said confession statements given by the accused have not been retracted. The detenu had not filed any bail application so far. A reading of the confession statement makes it clear that the detenu had created terror in the minds of the victim, his associates like his Office Manager and also his family members and was able to extract Rs.35 lakhs from him. It is further seen that the detenu has admitted that he had obtained wholesale license to sell the herbal petrol invented by one Ramar Pillai in Tamil Nadu and Andhra Pradesh. Both the detenu and the said Ramar Pillai were involved in the alleged herbal petrol case and they have collected money from various dealers. Because of his inability to return the advance money given by the dealers, they started troubling him and it had become necessary for him to somehow find money. Thereafter, on 22.1.2002, the detenu, along with his associates, hatched a conspiracy to get Rs.10 crores from the victim Palanisamy. They all programmed their abduction plan meticulously and executed the same. He has also confessed about the previous abduction and extortion of money from one Kumar, which is one of the adverse cases here.

15. From the above, it could be seen that the detenu became desparate and was involved in extracting huge sums of money from big industrialists. For the execution of the crimes, the detenu had formed a gang constituting about 10 to 15 of his associates, engaged a car and meticulously prepared and executed the plan of abduction according to their plan. Thus, it could be seen that there is a pattern of commission of crimes by the detenu in order to extract huge sums of money. In that process, it is seen that the detenu and his associates had to contact the family members of the victim, the Office Manager and the staff of the victim, the Branch Manager of the Bank, their staff, other workers and all concerned. Naturally, all of them were put under fear and threat because of the involvement of the victim. As it is stated by the learned Additional Public Prosecutor, there are materials to show that resolutions were passed by the Association of Industrialists at Tiruppur and requests were made to the Government to detain the detenu and others concerned under the Goondas Act. There was a fear which was created, as reflected by newspaper reports, and the whole town had been brought under police protection, number of police camps having been formed and the very information coming continuously in a number of newspaper reports for months together has really created a sense of insecurity and a scare in the minds of

the general public of the town. Though this is not elaborately dealt with in the grounds of detention, considering the gravity of the offences committed by the detenu by way of his operations, it could not but have invited the attention of industrialists, workers and the public of the town.

16. The definition under Section 2 of the Act says that maintenance of public order would include the threat of even a section of public and therefore, there cannot be any doubt that the staff and the workers of the victim and his family members were seriously threatened and their lives endangered. In the above circumstances, it cannot be stated that this is purely a case of business transaction between the detenu and the victim. It cannot be stated that the act committed by the detenu would not affect the life of the community. The act is so grave, it has endangered public tranquility, affecting public order. The detenu, by his act, has created a sense of insecurity in the minds of the business community who had been moving about, round the clock, without reference to time, in pursuit of their business activities. The factories and textile mills are spread over hundreds of miles in and around Tiruppur and businessmen have to commute to these units at odd hours. If they were to be waylaid and abducted for ransom, it would endanger the whole movement of the business community in that area.

17. A similar objection was raised and considered by the Supreme Court in Sharat Kumar Tyagi vs. State of U.P. (A.I.R. 1989 S.C. 764), inter alia, contending that the ground case would, at best, affect only law and order and would not pose a threat to the maintenance of public order. Repelling the said contention, their lordships have held that the demand of ransom and the attack launched on them would show that it was not a case of singling out a particular contractor for payment of money, but a demand expected to be complied with by all owners or contractors and in such circumstances, the demand made and the attack launched would undoubtedly cause fear and panic in the minds of all owners and contractors of that area and the tempo of the life of the community would be affected. It was observed that an apparent simple law and order situation might assume the gravity and mischief of public order by reason of the manner or the circumstances in which the act has been carried out. Even a single act may threaten the public order. Applying the above principle to the facts of the case on hand, we are clear in our minds that the act of the detenu herein has created a sense panic in the minds of the business community, thus affecting the life and tempo of public

life of the community. We are satisfied that the detaining authority had sufficient materials to come to the satisfaction that there was a compelling necessity to pass an order of detention against the detenu.

18. For all these reasons, no grounds are made out to interfere with the order of detention. The H.C.P. fails and it is accordingly dismissed. Consequently, H.C.M.P. No.168 of 2002 is closed.

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Index : Yes
Internet : Yes

To
1. The Secretary to Government,
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2. The District Collector and
District Magistrate,
Erode District, Erode.

3. The Superintendent,
Central Prison,
Coimbatore.

4. The Joint Secretary to Government,
State of Tamil Nadu,
Public (Law & Order) Department,
Fort St. George,
Chennai-600 009.

5. The Public Prosecutor,
Chennai-600 104.